

# THE LIMITS FOR THE GLOBAL PROLIFERATION OF COMPETITION LAW: THE CASE OF MACAO SAR

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## Abstract

The adoption and enforcement of competition rules which replace or supplement state regulation of markets has become a global trend that led to almost universal proliferation of competition law regimes. Following the lead of the developed market economies an increasing number of developing countries and transition economies have introduced competition rules in their national legal systems. Macao SAR, as a small developed economy concentrated around booming gaming industry, stands among few jurisdictions that do not have comprehensive competition legislation. Present paper analyses current situation with regulation of market competition in Macao with special focus on the gaming industry. While general competition rules embedded in the Commercial Code are left to the private enforcement by interested parties, specific competition rules applied to the gaming activities have to be enforced by the sector regulator lacking the knowledge and experience in antitrust enforcement. As a result, the effective antitrust enforcement is largely non-existent. The international trade obligations of Macao SAR under the WTO framework or its bilateral trade relations with China and European Union have not prompted the adoption of competition law either. The study is an attempt to provide explanations as to the current state of affairs with competition rules and to anticipate further developments in this field.

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**Keywords:** Competition law, economic regulation, gaming, Macao, unfair competition

## Introduction

The current transnational landscape of competition law regimes can be best described by the terms “universal proliferation” and “global convergence”. Already ten years ago it was reported that 101 countries had a competition law.<sup>7</sup> As reported by the UNCTAD in 2007, a total of 113 countries and regional groupings have adopted or were in the process of adopting competition legislation.<sup>8</sup> By 2009 the number of national competition authorities (NCAs) joining the International Competition Network has reached 104 NCAs from 92 jurisdictions.<sup>9</sup> Even though it has been argued that competition law regime is active in roughly 60-70% of the countries with competition legislation,<sup>10</sup> the universal proliferation of competition law regimes remains a largely uncontested trend. The global implementation of competition rules has become the norm with the end of the Cold War when numerous developing countries

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<sup>7</sup>See F. Kronthaler and J. Stephan, Factors accounting for the enactment of a competition law – an empirical analysis (May 2005), p. 5, available at [http://www.iwh-halle.de/projects/competition\\_policy/Factors\\_01.PDF](http://www.iwh-halle.de/projects/competition_policy/Factors_01.PDF).

<sup>8</sup>UNCTAD Guidebook on competition systems (Geneva, 2007), available at [http://unctad.org/en/Docs/ditccp20072\\_en.pdf](http://unctad.org/en/Docs/ditccp20072_en.pdf).

<sup>9</sup>ICN Factsheet and key messages, p. 1, available at <http://www.internationalcompetitionnetwork.org/uploads/library/doc608.pdf>.

<sup>10</sup>See A. Mateus, Competition and Development: What Competition Law Regime? (October 26, 2010), available at <http://ssrn.com/abstract=1699643>.

have realized the benefits of competition rules for their national economies and consumers.<sup>11</sup> The developing countries have been initially rejecting the idea of adopting competition rules when the government's control over economy was strong but with the wave of economic reform including privatizations and other economic liberalization measures the governments have gradually replaced regulation with competition rules.<sup>12</sup>

Against this background, there are only few jurisdictions that have not made competition rules a part of their national legal system. In this regard the Macao Special Administrative Region of the People's Republic of China (Macao SAR or Macao) represents a rare example of a developed market economy without a competition law regime.<sup>13</sup> The most recent WTO trade policy review for Macao concluded that there has not been overarching competition legislation in Macao as the authorities consider that current provisions, which are scattered around various laws and sector-specific regulations and rules, have provided adequate protection given that the territory is small and most business are small and medium enterprises.<sup>14</sup> The present paper considers these and other legal, economic and institutional factors that would explain the absence of competition law regime in Macao SAR. Casino gaming remains at the core of the Macao's economy in terms of its share in the region's GDP, employment and revenue.<sup>15</sup> In this sense the discussion on the government's policy towards competition in the gaming industry will contribute to the better understanding on why competition rules have not replaced sector regulation, which is currently the case in several other economic sectors such as energy, telecommunications, utilities, financial services, transport, etc. The paper also aims at evaluating the perspectives for adoption of a comprehensive competition law or the possibility that this region could become an 'isolated island' of law<sup>16</sup> surrounded by the sea of jurisdictions with developing competition law regimes.

### **Macao legal system and general competition rules**

Macao legal system belongs to Romano-Germanic legal family<sup>17</sup> with common features being codification of legislation and emphasis on public enforcement of economic regulations. Under "one country, two systems" principle embedded in the China's

<sup>11</sup>See UNCTAD, Benchmarking Competition Systems: A Global Survey of Major Institutional Characteristics, available at <http://unctad.org/en/Pages/DITC/CompetitionLaw/ResearchPartnership/Benchmarking-Competition.aspx>.

<sup>12</sup>See D. Wei, "Analytical Comparison as a Challenge for International and Comparative Competition Law" in Tong Io Cheng and Salvatore Mancuso (eds.) *New Frontiers of Comparative Law* (LexisNexis, 2013), p. 66.

<sup>13</sup>As reported by the Global Competition Forum on 13.05.2010 at <http://www.globalcompetitionforum.org/asia.htm#Macau>. With the population of 607,500 and an total surface of 31,3 km<sup>2</sup> Macao in 2013 has generated gross gaming revenue of 361,866 million MOP which brought per capita GDP to MOP 697,502 (approx. USD 87,306). Government of Macao Special Administrative Region, Statistics and Census Service, Macao in Figures 2014, <http://www.dsec.gov.mo/Statistic.aspx?NodeGuid=ba1a4eab-213a-48a3-8fbb-962d15dc6f87>.

<sup>14</sup>See Trade Policy Review of Macao, China, WT/TPR/S/281, WTO Secretariat, 25 March 2013, p.8. See also V. Quintã, "Competition law needed: WTO", Macau Business Daily (17.05.2013), available at <http://macaubusinessdaily.com/Economy/Competition-law-needed-WTO>.

<sup>15</sup>In 2011 services accounted for about 90% of GDP and employment; the gaming sector accounted for 45% of GDP and 20% of employment. Direct tax from gaming accounted for about 80% of total government revenue. Trade Policy Review of Macao, China, WT/TPR/S/281, WTO Secretariat, 25 March 2013, p.6.

<sup>16</sup>The concept of 'isolated island' of law for Macao was used in Tong Io Cheng and Wu Yanni, "Legal Transplant and the On-Going Formation of Macau Legal Culture" in Tong Io Cheng and Salvatore Mancuso (eds.) *New Frontiers of Comparative Law* (LexisNexis, 2013), p. 256.

<sup>17</sup>See generally P. NunesCorreia, "The Macanese Legal System: A Comparative Law Perspective" in Tong Io Cheng and Salvatore Mancuso (eds.) *New Frontiers of Comparative Law* (LexisNexis, 2013), pp. 133-140.

Constitution<sup>18</sup> and implemented in the Macao Basic Law,<sup>19</sup> the Macao SAR enjoys a high degree of autonomy in the exercise of executive, legislative and judicial powers.<sup>20</sup> The preservation of the capitalist system in Macao has been guaranteed by the Macao Basic Law for fifty years following the hand-over of Macao by Portugal to China in 1999.<sup>21</sup> The Macao Basic Law instructs the government to “pursue the policy of free trade and safeguard the free movement of goods, intangible assets and capital”.<sup>22</sup> The SAR shall also “protect the free operation of industrial and commercial enterprises and make its own policies on the development of industry and commerce” and “improve the economic development and provide legal guarantees for promoting the development of industry and commerce and for encouraging investments, technological progress and development of new industries and new markets”.<sup>23</sup> Notably, the word “competition” is nowhere to be found in the Macao Basic Law, which effectively leaves the policy choice for achievement of the above mentioned objectives to the discretion of the Macao SAR. In the policy statements of the Macao SAR Government competition and competition rules appear neither as objectives nor as the tools to achieve other objectives. For example, in the 2014 policy for economy and finance the Government pledged to promote economic diversification, support SMEs, deepen regional economic cooperation and strengthen financial and monetary regulations.<sup>24</sup> According to the policy statement, the above objectives shall be achieved through various state assistance and regulatory measures.<sup>25</sup>

In the sectors that are not directly regulated by the state, the businesses are free to formulate their own commercial policies subject to the general rules related to economic activity such as company law, contract law, taxation, etc. Competition between entrepreneurs is addressed by the Title X, Chapter I of the Macao Commercial Code (ComC).<sup>26</sup> The central provision is Article 153 ComC, which provides that competition between entrepreneurs shall take place in a manner that does not harm the interests of the economy of Macao.<sup>27</sup> The same provision prohibits all agreements or practices that have the object or effect of preventing, falsifying or restricting competition.<sup>28</sup> The following provisions regulate the validity of no-competition agreements between entrepreneurs. These shall respect the general prohibition of agreements harmful to the economy or those restricting competition and shall be in writing.<sup>29</sup>

The no-competition agreements must be also limited to a certain zone or certain

<sup>18</sup> The Constitution of the People's Republic of China, adopted at the 5<sup>th</sup> Session of the 5<sup>th</sup> National People's Congress and promulgated for implementation by the Announcement of the National People's Congress on 4 December 1982, Article 31, [http://www.npc.gov.cn/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm).

<sup>19</sup> The Basic Law of the Macao Special Administrative Region of the People's Republic of China, adopted by the 8<sup>th</sup> National People's Congress at its 1<sup>st</sup> Session on 31 March 1993, unofficial English translation is available at [http://bo.io.gov.mo/bo/i/1999/leibasica/index\\_uk.asp](http://bo.io.gov.mo/bo/i/1999/leibasica/index_uk.asp).

<sup>20</sup> Macao Basic Law, Article 2.

<sup>21</sup> See Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the question of Macao, <http://bo.io.gov.mo/bo/i/88/23/dc/en/>. See also Macao Basic Law, Article 5.

<sup>22</sup> Macao Basic Law, Article 111.

<sup>23</sup> Macao Basic Law, Article 114.

<sup>24</sup> See Macao SAR Government, Major Policies on Various Issues for the Fiscal Year of 2014, available at [http://portal.gov.mo/web/guest/info\\_detail?infoid=281287](http://portal.gov.mo/web/guest/info_detail?infoid=281287).

<sup>25</sup> See Macao SAR Government, Policy Address for the Fiscal Year of 2014 of the Macao Special Administrative Region (MSAR) of the People's Republic of China, available at [http://portal.gov.mo/web/guest/info\\_detail?infoid=302415](http://portal.gov.mo/web/guest/info_detail?infoid=302415).

<sup>26</sup> Commercial Code, approved by Decree-Law no. 40/99/M, 3 August 1999, unofficial English translation is available at <http://bo.io.gov.mo/bo/i/99/31/codcomen/>. See also J. Godinho, The Macau Commercial Code: An English Unofficial Translation (September 12, 2013), available at: <http://ssrn.com/abstract=1545094>.

<sup>27</sup> Commercial Code, Article 153(1).

<sup>28</sup> Commercial Code, Article 153(2).

<sup>29</sup> Commercial Code, Article 154(1).

activity<sup>30</sup> and their validity shall not exceed five years.<sup>31</sup> Summarily, the above mentioned provisions create private remedies for the parties willing to contest the validity of no-competition agreements. In line with the rules of civil procedure, the party alleging the invalidity of an anti-competitive agreement will bear the burden of proof in relation to the anti-competitive object or effect of such agreement.

Title X, Chapter II ComC identifies the acts of unfair competition, which are prohibited and can give rise to the private claims for damages. The general clause defines unfair competition as “any act of competition that objectively reveals itself to be in breach of the norms and honest usage of economic activity”.<sup>32</sup> The general clause is followed by a list of specific acts prohibited as unfair competition. Two of them are noteworthy as they concern practices that are often banned under the classic antitrust rules. One of them is exploitation of dependence defined as “undue exploitation by an entrepreneur of a situation of dependence, with economic repercussions, in which entrepreneurs who are his clients or suppliers may find themselves, and who do not have an equivalent alternative for the exercise of their activity”.<sup>33</sup> The exploitation of dependence does not require the showing of a dominant position. At the same time the absence of “an equivalent alternative for the exercise of their activity” might imply that the undertaking concerned is in a possession of substantial market power. The ComC also qualifies the sale at a loss as an act of unfair competition: “sales effected below the cost or acquisition price are considered unfair, if they are part of a strategy directed at the elimination of a competitor or a group of competitors from the market.”<sup>34</sup> The respective provision of the ComC also does not require the showing of dominance, which might imply that even the undertakings without market power cannot engage in sales at a loss with the purpose of eliminating competitors.

The Macao’s approach to defining the acts of unfair competition is thus a mixed one: there is a general clause and the non-exhaustive list of specific situations which are considered unfair competition acts. It has been argued that this enables certain flexibility and allows catching various emerging acts and practices.<sup>35</sup> While the competition provisions of ComC are primarily intended for private enforcement by the interested parties, some external reports referred to these provisions as basic elements of competition policy adopted by the Macao Government for the proper functioning of markets.<sup>36</sup> The survey of the judicial practice of the Macao’s courts in enforcing competition provisions of the ComC remains scarce and mainly restricted to the acts of unfair competition such as imitation of trademarks.<sup>37</sup>

Since there is no specialist competition law enforcement agency in Macao, the Macao Consumer Council<sup>38</sup> already in 2001 in its fair competition policy report suggested establishing a fair competition committee as a specialized agency to enforce competition rules in Macao, as well as an *ad hoc* competition arbitration tribunal to deal with claims based on competition rules.<sup>39</sup> While this proposal has not been implemented, the Consumer

<sup>30</sup> Commercial Code, Article 154(2).

<sup>31</sup> Commercial Code, Article 154(3).

<sup>32</sup> Commercial Code, Article 158.

<sup>33</sup> Commercial Code, Article 168.

<sup>34</sup> Commercial Code, Article 169.

<sup>35</sup> See A.Teixeira Garcia, “Unfair Commercial Practices and Cyber Consumer Protection” in Tong Io Cheng and Salvatore Mancuso (eds.) *New Frontiers of Comparative Law* (LexisNexis, 2013), p. 197.

<sup>36</sup> See U.S. Department of State, Bureau of Economic and Business Affairs, 2013 Investment Climate Statement – Macau (April 2013), available at <http://www.state.gov/e/eb/rls/othr/ics/2013/204682.htm>.

<sup>37</sup> See e.g. Judgment of the Court of Second Instance No. 13/2004 dated 26.02.2004, Judgment of the Court of Second Instance No. 844/2011 dated 07.02.2013, available at <http://www.court.gov.mo/>.

<sup>38</sup> Macao SAR Government Consumer Council, <http://www.consumer.gov.mo/>.

<sup>39</sup> See Macao SAR Government Consumer Council, Macao fair competition policy report, paras 97-100, available at [http://cc.informac.gov.mo/c/active/c\\_competition.htm](http://cc.informac.gov.mo/c/active/c_competition.htm).

Council has pursued other initiatives aimed at protection of consumer interests. One of such initiatives was the establishment in 2011 of the Supermarket Price Information Platform, an online database containing the retail prices of around three hundred products from over ten supermarkets.<sup>40</sup>

### Regulation of competition in the gaming industry

Since 1962 the Macao gaming industry was dominated by the monopoly concessionaire *Sociedade de Turismo e Diversões de Macau* (STDM). It was partially liberalized in 2002, when following the adoption of the Law No 16/2001<sup>41</sup> by the Legislative Assembly,<sup>42</sup> it was decided to issue three gaming concessions and introduce several new players to the gaming market. The tendering procedure organized pursuant to the Administrative Regulation No. 26/2001<sup>43</sup> resulted in the following winning bidders becoming new gaming concessionaires: (1) *Sociedade de Jogos de Macau* (SJM), a subsidiary of STDM, (2) *Galaxy Casino, S.A.* (Galaxy), and (3) *Wynn Resorts (Macao) S.A.* (Wynn). Later modifications of the concession contracts allowed the concessionaires to conclude sub-concessions agreements thus introducing three more players to the gaming market: *Venetian Macao S.A.* (Venetian), *MGM Grand Paradise, S.A.* (MGM) and *Melco PBL Jogos (Macao), S.A.* (Melco PBL). As a result of the above bidding distribution of the administrative concessions by Macao SAR, the gaming industry landscape was fixed until 2020 and 2022 respectively with currently six undertakings operating more than thirty casinos.<sup>44</sup>

The Law No 16/2001 contains several competition-related provisions that stipulate the prohibition of the anti-competitive agreements and practices, certain forms of abuse of dominant position and control of shareholdings. Thus, the law prohibits agreements and concerted practices, among the concession holders or companies belonging to the respective groups, which may prevent, restrict or distort competition among the concession holders.<sup>45</sup> The abuse by one or more concession holders of their dominant position on the market or in a substantial part thereof, which may prevent, restrict or distort competition among sub/concessionaires is likewise prohibited.<sup>46</sup> It should be noted, however, that due to the limited scope of application of the Law No 16/2001,<sup>47</sup> even though the gaming concessionaires compete on a wide range of market including accommodation, catering, entertainment, etc., the above mentioned competition rules only apply to their gaming activities i.e. operation of games of chance. It was also noted that the above provisions do not contain any exemptions similar to Article 101(3) TFEU and also do not require showing of anti-competitive effects making the intention or object of such agreements or practices the key evidence of their illegality.<sup>48</sup>

The Law No 16/2001 also aims at preventing the exchange of corporate shares and capital participations between concessionaires so that form a situation like corporation agreements: “casino gaming sub/concessionaires, and their main shareholders holding at least

<sup>40</sup> The database can be freely downloaded as a mobile phone application at <http://www.consumer.gov.mo/c/supermarket/en/mobile-app-en.asp>.

<sup>41</sup> Lei n.º 16/2001 *Regime jurídico da exploração de jogos de fortuna ou azar em casino*.

<sup>42</sup> Assembleia Legislativa da Região Administrativa Especial de Macau, <http://www.al.gov.mo/>.

<sup>43</sup> Regulamento Administrativo n.º 26/2001 *Regulamenta o concurso público para a atribuição de concessões para a exploração de jogos de fortuna ou azar em casino, o contrato de concessão e os requisitos de idoneidade e capacidade financeira das concorrentes e das concessionárias*.

<sup>44</sup> For the complete list of casinos see Gaming Inspection and Coordination Bureau, Information of Casino Addresses and Websites, available at [http://www.dicj.gov.mo/web/en/information/contacts\\_casino/content.html](http://www.dicj.gov.mo/web/en/information/contacts_casino/content.html).

<sup>45</sup> Law No. 16/2001, Article 21(3).

<sup>46</sup> Law No. 16/2001, Article 21(4).

<sup>47</sup> Law No. 16/2001, Article 1.

<sup>48</sup> See C. Wang, “Comentários sobre a Lei da Concorrência nos Jogos de Macau”, *Administração* n.º 87, vol. XXIII, 2010-1, p. 158.

5% of the corporate capital, cannot, directly or indirectly, hold 5% or more of the capital of other sub/concessionaires.”<sup>49</sup> The accumulation of positions in more than one sub/concessionaire is another form of corporate concentration prohibited by the law: “The holders of key corporate offices (namely, members of the board of directors) cannot accumulate positions in more than one sub/concessionaire or management company.”<sup>50</sup> The violations of the specified prohibitions may result in the following types of liability: (1) the acts or decisions made by such persons in violation of the law can be revoked; (2) the responsible state authority can order the removal of the individuals concerned from their respective positions; (3) responsible persons will be liable for an administrative infraction.<sup>51</sup>

The Gaming Inspection and Coordination Bureau (DICJ),<sup>52</sup> is an administrative authority that assists the Chief Executive of Macao SAR on the formulation and execution of the economic policies in the gaming industry. The responsibilities of the DICJ include supervision of the activities of the concessionaires, management of the issue of licenses for casinos and the gaming promoters, and inspection of casinos’ daily operation.<sup>53</sup> The DICJ is authorized to investigate and penalize any administrative violations according to the applicable substantial and procedural rules. Gaming operators that violate competition rules embedded in the Law No. 16/2001 carry administrative legal liability and can be sanctioned by the DICJ. As a result, for the gaming industry, the DICJ is not only a policy supervising organization, but also a state authority with administrative powers to enforce the law and sanction the perpetrators in case of administrative infractions. However, since the Law No. 16/2001 is silent on the amount of penalties that can be imposed for violation of competition rules, it has been argued that the vagueness of the penalty provisions might inhibit the effective administrative enforcement of competition rules by DICJ.<sup>54</sup>

While there is no evidence that the DICJ has ever sanctioned concessionaires for violation of the specified competition rules, the following cases could be illustrative in that regard. The first case concerns the price wars carried out by the casinos in relation to the commission rates paid to the gaming promoters. Casinos kept raising the commission rates in order to attract more VIP guests. It was reported that in 2008 six concessionaires have attempted to agree on the commission rates paid to the promoters or to enforce a price cap on these commissions, which could be regarded as price fixing, a form of anti-competitive behavior that violates competition provisions of the Law No.16/2001.<sup>55</sup> The legislative amendments passed in 2009 authorized the Secretary for Economy and Finance<sup>56</sup> to set the limits on the commission rates and regulate the mode of their payment. The Secretary has used these powers in October 2009 by setting the commission cap at 1,25% of the total amount of the bet.<sup>57</sup> There were also some indications in 2009 that gaming operators intended

<sup>49</sup> Law No. 16/2001, Article 17(10).

<sup>50</sup> Law No. 16/2001, Article 18(1).

<sup>51</sup> Law No. 16/2001, Article 18.

<sup>52</sup> *Direcção de Inspeção e Coordenação de Jogos*, <http://www.dicj.gov.mo/>.

<sup>53</sup> Regulamento Administrativo n.º 34/2003 *Organização e Funcionamento da Direcção de Inspeção e Coordenação de Jogos*.

<sup>54</sup> See C. Wang, “Comentários sobre a Lei da Concorrência nos Jogos de Macau”, *Administração* n.º 87, vol. XXIII, 2010-1, p. 170.

<sup>55</sup> See C. Wang, “Dealing with Competition Issues in the Casino Gaming Industry: the Silence of Macao’s Gaming Law”, *Journal of Macao Polytechnic Institute*, Vol. 12, No.4, 2009, p.7.

<sup>56</sup> *Secretário para a Economia e Finanças*, [http://portal.gov.mo/web/guest/info\\_detail?infoid=13608](http://portal.gov.mo/web/guest/info_detail?infoid=13608).

<sup>57</sup> Despacho do Secretário para a Economia e Finanças n.º 83/2009.

to freeze the salary increases, which could reduce the mobility of labour force and restrain competition for the skilled employees among the gaming operators.<sup>58</sup>

The application of abuse of dominant position is currently disabled due to the fact that even with some market leadership in relation to the revenues and number of customers, there is no single company that would held a dominant position and could act independently of its competitors.<sup>59</sup> The question is also what to consider the relevant product market: the gaming services in general or particular games offered to the casino customers. It was suggested that at least various gaming services should be distinguished: common game floor, VIP game room and slot machines.<sup>60</sup> The dimension of the relevant geographic market could also become relevant, however, due to the highly regulated nature of the gaming industry in Macao and high entry barriers the geographic market should be restricted to Macao SAR.

The above review of the specific competition rules applicable to the gaming sector identifies the following problems: (1) the existing competition rules are not substantiated in secondary legislation (2) DICJ does not have prior experience with antitrust rules; (3) the administrative penalty provisions remain too vague to provide sufficient deterrence to the anti-competitive conduct. These factors can explain the current lack of enforcement of competition rules in the gaming sector and will constrain the development of competition practice in the future. The interest (or the lack thereof) of the government to promote competition among gaming sub/concessionaires should be also considered in the light of the current taxation regime. Taxation of gaming activities is currently based on a fixed tax imposed on the gross gaming revenue as well as two types of contributions: to the public foundation (up to 2%) and to the urban development, promotion of tourism and social security.<sup>61</sup> At the same time the government has allowed a *de facto* discrepancy in the tax burden among the gaming concessionaires by equalizing the fixed percentage of gross revenue with certain in-kind contributions (such as the cost of river dredging) allowed to some operators. While the gross revenues of the casino operators have grown considerably more than the cost of in-kind contributions, this discrepancy can affect competitive position of various operators.<sup>62</sup>

## Conclusion

The brief review of the general competition rules embeded in the Commercial Code regulating behaviour of entrepreneurs and specialized competition rules contained in the Law No. 16/2001 setting the basic principles of the economic regulation of gaming industry highlights the current approach to market competition. In the highly regulated sectors such as gaming, energy, telecommunications, public utilities, transport, etc. monitoring and enforcement of market competition is entrusted to regulatory agencies, which tend to apply their classic regulatory tools rather than antitrust enforcement. In the liberalized markets, open to the foreign goods and services and characterized by the presence of SMEs, the enforcement of competition rules is left to the entrepreneurs, who in the absence of competition culture and with no experience with competition law tend to settle competition-related disputes out of court. Thus, the domestic legal, economic and institutional factors are currently not conducive to the adoption of the comprehensive competition legislation. The

<sup>58</sup>See C. Wang, “Comentários sobre a Lei da Concorrência nos Jogos de Macau”, *Administração* n.º 87, vol. XXIII, 2010-1, p. 160. See also M. Quental, “Employment Contracts in Macau Casinos” in Salvatore Mancuso (ed.) *Studies on Macau Gaming Law* (LexisNexis, 2012), 153-171.

<sup>59</sup>*Ibid.*, p. 163.

<sup>60</sup>*Ibid.*, p. 166.

<sup>61</sup>Law No. 16/2001, Article 22.

<sup>62</sup>See L. Pessanha, “Taxation of Gaming in Macau” in Salvatore Mancuso (ed.) *Studies on Macau Gaming Law* (LexisNexis, 2012), pp. 250-251.

following passages address the role of the external factors such as foreign trade relations in prompting the adoption of competition law in Macao.

The EU-Macao relations have been evolving under the 1992 Agreement for Trade and Cooperation, which provided for cooperation in the field of trade and other areas such as industrial cooperation, investment, science and technology, information, communication, culture, environment, social development, tourism, etc.<sup>63</sup> In relation to investment cooperation, the parties agreed to “improve the climate for investment on both sides...on a basis of non-discrimination and reciprocity”.<sup>64</sup> Unlike more recent trade agreements of the EU, the EU-Macao Agreement does not provide for any obligations or cooperation concerning competition matters. In its 2013 Annual Report on Macao the EU Commission mentioned the EU’s proposal for dialogue on the regulatory framework for facilitating trade and investment, including competition, government procurement, regulatory procedures and intellectual property rights.<sup>65</sup> Nevertheless, there has been no further developments in the direction of reforming current competition rules scattered throughout various legislation.

The economic relations between Macao and Mainland China have been evolving under the framework of 2003 Closer Economic Partnership Arrangement (CEPA).<sup>66</sup> The CEPA is primarily aimed at liberalization of trade in goods, trade in services, promotion of trade and investment facilitation.<sup>67</sup> While the Mainland has already granted concessions on market access in 18 service sectors<sup>68</sup> to Macao service suppliers, Macao’s liberalization of trade in services for the Mainland are yet to be agreed.<sup>69</sup> The agreement specifically provides for cooperation in the field of banking, securities and insurance in order to “support Mainland financial institutions in establishing business in Macao” and to “support Mainland banks in developing network and business activities in Macao through acquisition”.<sup>70</sup> Although the effective penetration of the Macao’s services markets by the Mainland service suppliers is a matter of the future, the CEPA does not provide any obligations or commitments concerning competition. Thus, even though both Mainland China and Hong Kong have adopted comprehensive competition legislation, Macao SAR has not yet followed their example and with the current economic regulation policies in place one should not expect any substantial changes in the current approach towards competition.

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<sup>63</sup> Agreement for trade and cooperation between the European Economic Community and Macao, OJ L404, 31.12.1992, p. 27.

<sup>64</sup> Agreement for trade and cooperation between the European Economic Community and Macao, Article 7.

<sup>65</sup> European Commission, Joint Report to the European Parliament and the Council Macao Special Administrative Region: Annual Report 2013, JOIN(2014)19, 16.05.2014.

<sup>66</sup> Mainland and Macao Closer Economic Partnership Arrangement, signed on 17.10.2003, entry into force 01.01.2004, available at [http://www.economia.gov.mo/public/docs/CEPA\\_CEPA\\_I/index/en/efulltext.pdf](http://www.economia.gov.mo/public/docs/CEPA_CEPA_I/index/en/efulltext.pdf). See also C-H Wu, “A New Landscape in the WTO: Economic Integration Among China, Taiwan, Hong Kong, and Macao” in C. Hermann and J.P. Terhechte (eds.) *European Yearbook of International Economic Law*(2012) 241-270.

<sup>67</sup> CEPA, Article 1.

<sup>68</sup> Legal, accounting, architectural, medical and dental, real estate, advertising, management consulting, convention and exhibition, value-added telecommunications, audio-visual, construction and related engineering, distribution, insurance, banking, securities, tourism, transport, logistics. See also A. Emch, *Services Regionalism in the WTO: China’s Trade Agreements with Hong Kong and Macao in the Light of Article V(6) GATS* (July 12, 2010), available at <http://ssrn.com/abstract=978843>.

<sup>69</sup> CEPA, Annex 4 Specific Commitments on Liberalization of Trade in Services, available at [http://www.economia.gov.mo/public/docs/CEPA\\_CEPA\\_I/index/en/eannex4.pdf](http://www.economia.gov.mo/public/docs/CEPA_CEPA_I/index/en/eannex4.pdf).

<sup>70</sup> CEPA, Article 13.



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